IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPLICATION NO.13 OF 2002

The Commissioner of Customs
(Export Promotion)
New Customs House, Ballard
Estate, Mumbai - 400 001. ..Applicant.

V/s.

Shri. Shailesh Damodia Proprietor
of M/s.Vision Pharma, Office No.2,
Tribhuvan Co-op. Hsg.Soc. Plot No.
214, Hinwala Cross Lane, Ghatkopar
(East), Mumbai 400 077 ..Respondent.

Mr.A.J.Rana, Senior counsel with P.S.Jetly for applicant.

Mr.M.R.Baya i/b. N.S.Thacker for respondent.

CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 18TH JANUARY, 2007.

ORAL JUDGMENT (PER DR.S.RADHAKRISHNAN, J.)

. Heard learned Senior Counsel for the applicant and learned counsel for the respondent. The appeal was admitted on 9the March, 2005 on the following substantial question of law:-

" Whether the Tribunal is justified in coming to the conclusion that there was no basis for confiscation of the goods under section 111(d) of the Customs Act in view of the following:-

(a) The respondent has been consistently

prevaricating and particularly in view of the fact that challans on pages 37 & 38 are in the name of the respondent's firm contrary to his case that Parekh & Co. of Calcutta sent the goods to one Shantibhai of Delhi;

(b) No Bill of Entry nor any order of clearance under section 47 of the Customs Act has been produced to show the lawful importation of the goods that are admittedly of Chinese origin. (It is irrelevant that no import licence is required to import the goods in question);

(c) The importation of the goods is in breach of the mandatory provisions of section 9 read with section 10 of the Drugs & Cosmetics Act of 1940 (further read with the Rules framed under the 1940 Act) which render them liable to confiscation. (In fact, authority under the 1940 Act has directed the Department to destroy the goods for non compliance with the provisions of 1940 Act read with the Rules framed thereunder);

2. Learned Senior counsel for applicant pointed out that the Tribunal has set aside the order of confiscation without assigning any reasons. Under the aforesaid facts and circumstances of the case, we direct the Tribunal to send the statement of case as expeditiously as possible.

3. Application stands disposed of accordingly.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)